

But the question now to be decided is, whether a female infant has the capacity to bind her *real estate* by a marriage settlement; and this question is considered by Chancellor Kent as settled against the power, by the case of *Milner vs. Lord Harewood*, 18 *Ves.*, 259.

It is true, the precise point which the facts of that case made it necessary to decide, did not involve this question; but it is equally true, Lord Eldon more than once, in the course of his argument, expressed a decided opinion against the power; and I am persuaded that no one can read what his lordship said in that case, without being fully satisfied of the absolute conviction of his mind, that a female infant would not be bound by such an ante-nuptial settlement of her own real estate.

A very strong case upon this subject is reported in 13 *Eng. Cond. Ch. Rep.*, 78—the case of *Simpson vs. Jones*; and according to the opinion of the Master of the Rolls, (Sir John Leach,) pronounced in that case, after full deliberation, the point would appear to be definitely settled against the power. The infant in that case was a ward of the court, and the settlement, which was a most reasonable one, was made with its approbation, after a reference to the Master—and yet it was held not to be binding upon the infant. It was not even contended there that the infant was competent so to bind her real estate, or her *separate* personal estate, if the settlement had not been made with the approbation of the court; and the question was, whether the court had jurisdiction to give to a female infant the power of disposition of her separate property during her infancy, by a settlement made in contemplation of marriage.

In deciding against the jurisdiction of the court to confer such power upon an infant, Sir John Leach said, “whatever doubts may have been entertained upon the subject formerly, I take it to be clear that the real estate of a female infant would not be bound by a settlement made with the approbation of the court; and it appears to me to follow, that the same principle is applicable to personal estate settled to her separate use.

The parties who maintained the validity of the settlement in that case, presented a petition of appeal to the House of Lords;